

# SENATE JOURNAL

## ALASKA STATE LEGISLATURE

### TWENTY-THIRD LEGISLATURE -- FIRST SESSION

Juneau, Alaska

Monday

March 3, 2003

#### Forty-second Day

Pursuant to adjournment the Senate was called to order by President Therriault at 11:07 a.m.

The roll showed thirteen members present. Senators Bunde, Ellis, Seekins, Wagoner were excused from a call of the Senate. Senators French, Guess, Ogan were absent.

The prayer was offered by the Chaplain, Reverend C. Ronald Covey of the Douglas Community United Methodist Church. Senator Hoffman moved and asked unanimous consent that the prayer be spread. Without objection, it was so ordered.

Mr. President, Honorable Senators, members of the staff, distinguished guests and visitors, with the deepest respect for the diversity of faith traditions in our great state, let us take this moment for prayer and reflection.

Creating Spirit, we come to these sessions mindful of the many responsibilities entrusted to us: the responsibility to bring growth and development, the responsibility to preserve and protect, the responsibility to wisely use resources, the responsibility to find resources for those in need, the responsibility to listen to the voices of the people and the responsibility to listen to our own conscience.

As the mountains rise above the seas and forests, help us to rise above the strife of dissent and the clamor of narrow interests to see clearly the pathway we may walk for the good of this great land. Amen.

Senator Wilken led the Senate in the Pledge of Allegiance.

### **Certification**

Senator Ben Stevens moved and asked unanimous consent that the journals for the thirty-ninth through forty-first legislative days be approved as certified by the Secretary. Without objection, it was so ordered.

### **Messages from the House**

Message dated February 28 was read, stating the House passed and transmitted for consideration:

#### **First Reading and Reference of House Bills**

##### **HB 9**

CS FOR HOUSE BILL NO. 9(FIN) am BY THE HOUSE FINANCE COMMITTEE, entitled:

"An Act relating to the registration of individuals who perform home inspections; relating to regulation of contractors; relating to registration fees for specialty contractors, home inspectors, and associate home inspectors; relating to home inspection requirements for residential loans purchased or approved by the Alaska Housing Finance Corporation; relating to civil actions by and against home inspectors and to civil actions arising from residential unit inspections; repealing a law that limits liability for damages based on a duty to inspect a residential unit to damages caused by gross negligence or intentional misconduct; and providing for an effective date."

was read the first time and referred to the Labor and Commerce and Finance Committees.

**Standing Committee Reports****SB 78**

The Finance Committee considered SENATE BILL NO. 78 "An Act relating to an optional group of persons eligible for medical assistance who require treatment for breast and cervical cancer; relating to cost sharing by those recipients under the medical assistance program; and providing for an effective date." Signing do pass: Senators Green and Wilken, Cochairs; Senators Taylor, Ben Stevens. Signing no recommendation: Senators Hoffman, Olson.

The following previously published fiscal information applies:  
Fiscal Note No. 1, Department of Health and Social Services

The bill was referred to the Rules Committee.

**Introduction and Reference of Senate Bills****SB 95**

SENATE BILL NO. 95 BY SENATOR GREEN, entitled:

"An Act relating to strikes by employees of a municipal school district, a regional educational attendance area, or a state boarding school, and requiring notice of at least 72 hours of a strike by those employees."

was read the first time and referred to the Health, Education and Social Services and Labor and Commerce Committees.

**SB 96**

SENATE BILL NO. 96 BY SENATOR DYSON, entitled:

"An Act relating to the crime of distribution of child pornography."

was read the first time and referred to the State Affairs and Judiciary Committees.

**SB 97**

SENATE BILL NO. 97 BY THE SENATE RULES COMMITTEE  
BY REQUEST OF THE GOVERNOR, entitled:

"An Act relating to public interest litigants and to attorney fees; and amending Rule 82, Alaska Rules of Civil Procedure."

was read the first time and referred to the Resources and Judiciary Committees.

The following fiscal information was published today:

Fiscal Note No. 1, zero, Department of Law

Fiscal Note No. 2, indeterminate, Department of Administration

Governor's transmittal letter dated February 28:

Dear President Therriault:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would change the Alaska Rules of Civil Procedure as they apply to the award of attorney's fees. First, the bill provides for specific rules that govern the award of attorney's fees to or against certain public interest litigants. The bill does so by specifically requiring that any award of attorney's fees to or against public interest litigants for cases contesting decisions by the Department of Environmental Conservation, the Department of Fish and Game, or the Department of Natural Resources making a coastal consistency determination, adopting regulations, or in which the public had an opportunity to comment to the agency and seek administrative review before the agency, be governed by Alaska Rule of Civil Procedure 82 (Rule 82). The bill would then amend Rule 82 to require that attorney's fees be awarded to or against a public interest litigant in those situations in the same manner as attorney's fees are awarded to or against non-public interest litigants under Rule 82(b). Second, the bill provides, for all litigants, that in the absence of exceptional circumstances, courts may award increased fees only for issues upon which a party prevailed.

Under Rule 82, attorney's fees are awarded to the prevailing party. By rule, the attorney's fee awards are limited to a specified percentage of the actual fees, with the precise percentage dependent upon a number of factors, including whether the case is contested or goes to trial, and whether or not a money judgment is received. The complexity of the case and length of trial are among a list of other factors that may be used by the court to vary the size of the award. Upon consideration of a variety of factors, a court may apportion fees based upon the issues and whether a party prevailed. In contrast, current Alaska case law creates an exception to Rule 82 by which, in most circumstances, public interest litigants who prevail receive full attorney's fees, with no apportionment by issue, but are not liable for an opposing party's fees if the public interest litigant loses the case.

The attorney's fee exception for public interest litigants creates several undesirable incentives when decisions of the state are called into question. First, those seeking to preserve an action of the state have an incentive to avoid litigation because of the possibility of full attorney's fees being awarded against them. This is compounded by the fact that those seeking to overturn actions of the state have an affirmative incentive to take a chance on doubtful claims because they may win and earn large rewards in the form of full fees, without the counterbalancing risk of even partial fees being awarded against them. This is of particular concern in the area of resource development where well-financed groups have sought to use litigation to impede the state's efforts to proceed with the orderly development of its resources.

This bill would redress this imbalance in the narrow group of cases involving the resource agencies

I urge your prompt consideration and passage of this bill.

Sincerely,

/s/

Frank H. Murkowski  
Governor

**Consideration of the Calendar****Second Reading of Senate Bills****SB 51**

SENATE BILL NO. 51 "An Act relating to revenue bonds issued by the Alaska Municipal Bond Bank Authority and the total amount of bonds and notes outstanding of that authority; and providing for an effective date" was read the second time.

SENATE BILL NO. 51 will be on the March 4 calendar.

**Citations**

Honoring – Juneau-Douglas High School Crimson Bears, 2002 4A Volleyball Champions

Senator(s) Elton, Therriault, Cowdery, Davis, Dyson, Green, Guess, Hoffman, Lincoln, Seekins, Ben Stevens, Gary Stevens, Taylor, Wilken

Representative(s) Kerttula, Weyhrauch

Honoring – Lisa B. Nelson

Senator(s) Dyson, Davis, French, Ellis, Therriault, Cowdery, Elton, Green, Guess, Hoffman, Lincoln, Seekins, Ben Stevens, Gary Stevens, Taylor, Wilken

Honoring – Francis Pete, Sr., Alaska Recipient of the Head Start Father of the Year

Senator(s) Olson, Bunde, French, Ellis, Therriault, Cowdery, Davis, Dyson, Elton, Green, Guess, Hoffman, Lincoln, Seekins, Ben Stevens, Gary Stevens, Taylor, Wilken

Representative(s) Foster

Honoring – Warren Wilson

Senator(s) Olson, French, Therriault, Cowdery, Davis, Dyson, Elton, Green, Guess, Hoffman, Lincoln, Seekins, Ben Stevens, Gary Stevens, Taylor, Wilken

Representative(s) Joule

Honoring – Rafael S. Castanos

Senator(s) Taylor, Therriault, Cowdery, Davis, Dyson, Elton, Green, Guess, Hoffman, Lincoln, Seekins, Ben Stevens, Gary Stevens, Wilken

Honoring – United States Space Shuttle Columbia

Representative(s) Anderson

Senator(s) Guess, Bunde, French, Ellis, Therriault, Cowdery, Davis, Dyson, Elton, Green, Hoffman, Lincoln, Seekins, Ben Stevens, Gary Stevens, Taylor, Wilken

Honoring – Katie and Doyle Currier, 50<sup>th</sup> Wedding Anniversary

Representative(s) Masek

Senator(s) Therriault, Cowdery, Davis, Dyson, Elton, Green, Guess, Hoffman, Lincoln, Seekins, Ben Stevens, Gary Stevens, Taylor, Wilken

Honoring – Jon Misewicz, Eagle Scout

Representative(s) Coghill

Senator(s) Therriault, Bunde, Cowdery, Davis, Dyson, Elton, Green, Guess, Hoffman, Lincoln, Seekins, Ben Stevens, Gary Stevens, Taylor, Wilken

Honoring – North Star Volunteer Fire Department

Representative(s) Coghill

Senator(s) Bunde, Therriault, Cowdery, Davis, Dyson, Elton, Green, Guess, Hoffman, Lincoln, Seekins, Ben Stevens, Gary Stevens, Taylor, Wilken

Honoring – The UAF Men's Basketball Team, 2002 BP Top of the World Classic Champions

Representative(s) Guttenberg

Senator(s) Seekins, Therriault, Cowdery, Davis, Dyson, Elton, Green, Guess, Hoffman, Lincoln, Ben Stevens, Gary Stevens, Taylor, Wilken

In Memoriam – Billy Joe Smart

Senator(s) Taylor, Bunde, Therriault, Cowdery, Davis, Dyson, Elton, Green, Guess, Hoffman, Lincoln, Seekins, Ben Stevens, Gary Stevens, Wilken

In Memoriam – Lee M. Fett, Alaskan Pioneer and Homesteader, Delta Junction Farmer and Family Man

Representative(s) Harris

Senator(s) Therriault, Bunde, Cowdery, Davis, Dyson, Elton, Green, Guess, Hoffman, Lincoln, Seekins, Ben Stevens, Gary Stevens, Taylor, Wilken

In Memoriam – William Robert Keys

Representative(s) Coghill

Senator(s) Bunde, Therriault, Cowdery, Davis, Dyson, Elton, Green, Guess, Hoffman, Lincoln, Seekins, Ben Stevens, Gary Stevens, Taylor, Wilken

In Memoriam – Celebrating the Life of Alaskan Artist Fred Machetanz

Representative(s) Kohring, Gatto, Masek, Stoltze, Harris, Dahlstrom

Senator(s) Ogan, Green, Therriault, Bunde, French, Ellis, Cowdery, Davis, Dyson, Elton, Guess, Hoffman, Lincoln, Seekins, Ben Stevens, Gary Stevens, Taylor, Wilken, Olson

Senator Ben Stevens moved and asked unanimous consent that the citations be adopted. Without objection, the citations were adopted and referred to the Secretary for transmittal.

#### **Unfinished Business**

Senator Davis moved and asked unanimous consent to be excused from a call of the Senate from March 7 through March 9, evening plane time. Without objection, Senator Davis was excused.

Senator Dyson moved and asked unanimous consent to be excused from a call of the Senate from March 18, 7:47 p.m., through March 24, 1:35 p.m. Without objection, Senator Dyson was excused.

Senator Wilken moved and asked unanimous consent to be excused from the Senate, not subject to a call, from March 7, afternoon plane time, through March 9, evening plane time. Without objection, Senator Wilken was excused.



**SB 41**

Senator Wilken moved and asked unanimous consent to be shown as a cosponsor on SPONSOR SUBSTITUTE FOR SENATE BILL NO. 41 "An Act relating to medical care and crimes relating to medical care, including medical care and crimes relating to the medical assistance program." Without objection, it was so ordered.

**SB 13**

Senator Lincoln moved and asked unanimous consent to be shown as a cosponsor on SENATE BILL NO. 13 "An Act prohibiting discrimination in insurance rates based on credit rating or credit scoring; and providing for an effective date." Without objection, it was so ordered.

**SB 26**

Senator Lincoln moved and asked unanimous consent to be shown as a cosponsor on SENATE BILL NO. 26 "An Act relating to state employees who are called to active duty as reserve or auxiliary members of the armed forces of the United States; and providing for an effective date." Without objection, it was so ordered.

**Announcements**

Announcements are at the end of the journal.

**Adjournment**

Senator Ben Stevens moved and asked unanimous consent that the Senate stand in adjournment until 11:30 a.m., March 4, 2003. Without objection, the Senate adjourned at 11:29 a.m.

Kirsten Waid  
Secretary of the Senate

March 2003

**Announcements**

Americans with Disabilities Act Notice - Persons with disabilities who require special accommodation or alternative communication formats to access committee meetings may contact the appropriate committee office or the Legislative Information Office in their community. Reasonable advance notice is needed to accommodate the request. For further information, call the ADA Coordinator at 465-3854 Voice/465-4980 TDD.

**STANDING COMMITTEES**

+ indicates teleconference

= indicates bill previously heard/scheduled

**COMMUNITY & REGIONAL AFFAIRS**

<b>Mar 03</b>	<b>Monday</b>	<b>Fahrenkamp 203</b>	<b>1:30 PM</b>
		No Meeting Scheduled	
<b>Mar 05</b>	<b>Wednesday</b>	<b>Fahrenkamp 203</b>	<b>1:30 PM</b>
		Bills Previously Heard/Scheduled	
+ SB 38		ADOPTION OF SAFETY CODES	
+ HCR 2		EXTEND ALASKA RAILROAD TO FT. GREELY	
<b>Mar 07</b>	<b>Friday</b>	<b>Fahrenkamp 203</b>	<b>1:30 PM</b>
		No Meeting Scheduled	

**FINANCE**

<b>Mar 03</b>	<b>Monday</b>	<b>Senate Finance 532</b>	<b>9:00 AM</b>
= SB 78		MEDICAID FOR BREAST & CERVICAL CANCER	
= SB 75		SUPPLEMENTAL APPROPRIATIONS: FAST TRACK	
= SB 76		SUPPLEMENTAL APPROPRIATIONS	
		Bills Previously Heard/Scheduled	
<b>Mar 04</b>	<b>Tuesday</b>	<b>Senate Finance 532</b>	<b>9:00 AM</b>
		Joint w/(H) Finance	
		State of Our University Address	
		President Mark Hamilton,	
		University of Alaska	

**FINANCE (continued)**

**Mar 05      Wednesday                      Senate Finance 532              9:00 AM**  
 = SB 75 SUPPLEMENTAL APPROPRIATIONS: FAST TRACK  
 = SB 76 SUPPLEMENTAL APPROPRIATIONS  
 HB 101 APPROP: GRANT TO ARCTIC POWER FOR ANWR  
 = SB 20 EXTEND BOARD OF MARINE PILOTS  
 SB 47 EXTEND BOARD OF NURSING  
 Bills Previously Heard/Scheduled

**Mar 06      Thursday                                  Senate Finance 532              9:00 AM**  
 = SB 75 SUPPLEMENTAL APPROPRIATIONS: FAST TRACK  
 = SB 76 SUPPLEMENTAL APPROPRIATIONS  
 SB 25 AHFC LOANS TO EDUCATORS  
 SB 43 EXTEND STATE MEDICAL BOARD  
 HB 71 EXTEND BOARD OF MIDWIVES  
 Bills Previously Heard/Scheduled

**Mar 07      Friday    Senate Finance 532              9:00 AM**  
 Bills Previously Heard/Scheduled

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**HEALTH, EDUCATION & SOCIAL SERVICES**

**Mar 03      Monday    Butrovich 205              1:30 PM**  
 + Confirmation Hearings:  
 University of Alaska Board of Regents -  
 James C. Hayes, Cynthia Henry,  
 Mary K. Hughes, Michael Snowden,  
 Derek Miller  
 Board of Education and Early Development-  
 Patsy DeWitt, Esther Cox,  
 Shirley Holloway, Richard I. Mauer,  
 Sylvia Reynolds, Rex Rock, Tim R. Scott  
 + Bills Previously Heard/Scheduled

**Mar 05      Wednesday                                  Butrovich 205              1:30 PM**  
 + SB 8 TAMPERING WITH PUBLIC RECORDS  
 + SB 55 TAMPERING WITH PUBLIC RECORDS  
 + SB 17 MEDICAID FOR BREAST & CERVICAL CANCER  
 + Bills Previously Heard/Scheduled

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**JUDICIARY**

<b>Mar 03</b>	<b>Monday</b> No Meeting Scheduled	<b>Beltz 211</b>	<b>1:30 PM</b>
<b>Mar 05</b>	<b>Wednesday</b> -- Time and Location Change -- Joint w/(H) Judiciary Confirmation Hearings: Select Committee on Legislative Ethics - Dennis "Skip" Cook, Herman G. Walker, Jr Judicial Council - Bill Gordon Violent Crimes Compensation Board - Gerad G. Godfrey	<b>Capitol 120</b>	<b>1:00 PM</b>
<b>Mar 07</b>	<b>Friday</b> No Meeting Scheduled	<b>Capitol 120</b>	<b>1:00 PM</b>

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**LABOR & COMMERCE**

<b>Mar 04</b> + SJR 7	<b>Tuesday</b> VANCOUVER'S BID FOR 2010 WINTER GAMES Confirmation Hearings: Board of Public Accountancy Alcoholic Beverage Control Board Architects, Engineers and Land Surveyors Board of Barbers and Hairdressers Board of Chiropractic Examiners Board of Marine Pilots Personnel Board Certified Real Estate Appraisers Board of Veterinary Examiners Workers Compensation Board	<b>Beltz 211</b>	<b>1:30 PM</b>
<b>Mar 06</b> += SB 72	<b>Thursday</b> EXTEND REGULATORY COMMISSION OF ALASKA	<b>Beltz 211</b>	<b>1:30 PM</b>

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**RESOURCES**

**Mar 03 Monday Butrovich 205 3:30 PM**  
 -- Meeting Postponed --  
 + Confirmation Hearing:  
 Commissioner, Dept of Fish & Game  
 (Pending Referral)  
 + SB 79 EXTEND ALASKA MINERALS COMMISSION  
 + Bills Previously Heard/Scheduled

**Mar 05 Wednesday Butrovich 205 3:30 PM**  
 + SB 92 STRANDED GAS DEVELOPMENT ACT AMENDMENTS  
 + Bills Previously Heard/Scheduled

**Mar 07 Friday Butrovich 205 3:30 PM**  
 No Meeting Scheduled

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**STATE AFFAIRS**

**Mar 06 Thursday Beltz 211 3:30 PM**  
 <Rescheduled from 2/27/03>  
 + Confirmation Hearings:  
 State Commission on Human Rights -  
 Grace Merkes  
 Lester Lunceford  
 Robert B. Sawyer, Jr  
 AK Public Offices Commission -  
 Larry D. Wood  
 + SCR 4 AVALANCHE AWARENESS MONTH  
 + SB 77 WILLIAM RANSOM WOOD CENTENNIAL BRIDGE

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**TRANSPORTATION**

**Mar 04 Tuesday Butrovich 205 1:30 PM**  
 SB 83 SVEN HAAKANSON AIRPORT AT OLD HARBOR  
 SB 23 ANCHORAGE COASTAL WILDLIFE REFUGE

**Mar 06 Thursday Butrovich 205 1:30 PM**  
 No Meeting Scheduled

**TRANSPORTATION (continued)**

**Mar 11 Tuesday Terry Miller 104 1:30 PM**  
 -- Location Change --  
 = SB 31 RAILROAD UTILITY CORRIDOR TO & IN CANADA  
 <Bill Hearing Postponed to 3/18/03>  
 + Joint w/(H) Transportation  
 Port of Bellingham

**Mar 13 Thursday Terry Miller 104 1:15 PM**  
 -- Time and Location Change --  
 + Joint w/(H) Transportation  
 Airport Bond Issues

**Mar 18 Tuesday Butrovich 205 1:30 PM**  
 -- Rescheduled from 3/11/03 --  
 += SB 31 RAILROAD UTILITY CORRIDOR TO & IN CANADA

**Mar 25 Tuesday Butrovich 205 1:30 PM**  
 += SB 40 CONSTRUCTION OF HIGHWAYS BY DOTPF

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**SPECIAL COMMITTEES**

**WORLD TRADE AND STATE/FEDERAL RELATIONS**

**Mar 10 Monday Fahrenkamp 203 4:00 PM**  
 Briefings:  
 Northern Forum,  
 Circumpolar Infrastructure Task Force

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**JOINT COMMITTEES**

**ARMED SERVICES COMMITTEE**

**Mar 11 Tuesday Senate Finance 532 1:00 PM**  
 Military Legislative Address:  
 Lt General Carrol H. "Howie" Chandler,  
 USAF Commander, Alaska Command  
 Brigadier General Craig Campbell,  
 Adjutant General, Alaska National Guard

**JOINT COMMITTEES (continued)****LEGISLATIVE BUDGET & AUDIT**

**Mar 27**      **Thursday**                      **House Finance 519**              **4:00 PM**  
 Audits and Other Committee Business  
 Including an Executive Session

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**OTHER MEETINGS****FISH CAUCUS**

**Mar 05**      **Wednesday**                      **Butrovich 205**              **12:00 PM**  
 United Fishermen of Alaska

**Mar 07**      **Friday**                              **House Finance 519**              **9:00 AM**  
 Fish Farming in British Columbia  
 C.C. "Bud" Graham, Acting Deputy Minister for Agriculture,  
 Food and Fisheries, Provincial Government of British Columbia

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**JOINT SESSION**

**Mar 04**      **Tuesday**                              **House Chamber**              **12:00 PM**  
 Limited Confirmation of Governor's  
 Appointees

**Mar 05**      **Wednesday**                      **House Chamber**              **11:00 AM**  
 State of the Judiciary  
 Chief Justice Dana Fabe

**Mar 05**      **Wednesday**                      **House Chamber**              **7:00 PM**  
 Budget Address  
 Governor Frank Murkowski

**Mar 31**      **Monday**                              **House Chamber**              **11:00 AM**  
 Address by U.S. Senator Ted Stevens

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**MINORITY CAUCUS**

<b>Mar 04</b>	<b>Tuesday</b>	<b>Fahrenkamp 203</b>	<b>4:30 PM</b>
	Joint w/(H) Minority		